IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

:: O R D E R ::

D.B. CIVIL WRIT PETITION NO.906/2000

Union of India & Ors.
Vs.
The Central Administrative Tribunal, Jaipur Bench & Anr.

Date of Order :: 10th October, 2006

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE P.S. ASOPA
: :

Shri Shanker Lal Sharma for the petitioners.
Shri R.N. Mathur for respondent no.2.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)

This writ petition is directed against the order of the Central Administrative Tribunal (in short, the Tribunal), Jaipur Bench, dated 20.10.1999

in Original Application no.167/1996 allowing, in part, the application of respondent no.2, Shripal Jain (hereinafter referred to as 'the respondent').

Brief facts of the case are that on 10.8.1987 a charge-sheet was issued to the respondent under rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 in respect of certain acts of misconduct allegedly committed by him during his tenure as Senior Advertisement Inspector, Bombay and Chief Publicity Inspector, Jaipur between 1980 and 1985. He was alleged to have shown undue favour to M/s Mahaveer Advertising Bureau, Jaipur, owned by his father, by managing its recognition as canvassing agency of the Western Railways and, further, manoeuvred its business of displaying advertisement and obtaining commission from the Railways.

During pendency of the departmental proceeding the respondent superannuated from service on 31.3.1989. Provisional monthly pension @ Rs.1338/- plus relief admissible from time to time was released; however payment of Death –cum- Retirement Gratuity (DCRG) and the commutation of pension was withheld on

account of pendency of the proceeding.

In the aforesaid proceeding which was continued under the Pension Rules, on 24.4.1991 report was submitted by the Enquiry Officer. As per the findings of the Enquiry Officer, the charge of manoeuvring the business of displaying advertisement to cause benefit to his father's firm, M/s Mahaveer Advertising Bureau, was found to be proved; the other charge about managing recognition of the firm as a canvassing agency of the railways however was found not proved. Pursuant to the show-cause notice the respondent filed representation. He also filed Original Application no.246/1992 before the Tribunal seeking direction to release the DCRG and commutation of pension. The Tribunal by order dated 28.8.1992 allowed the application with direction to release the DCRG and commutation of pension. After the respondent filed contempt petition, the amount due as DCRG was paid and pension to the extent of Rs.446/- was commuted in February 1993.

The case of the respondent in the light of

the aforesaid enquiry report, however, was processed in the meantime at different levels including the Union Public Service Commission. A decision was taken at the appropriate level on behalf of the President of India to reduce pension by 10% for one year in view of the charge which stood proved. On 8.2.1996 the Divisional Accounts Officer, Western Railways, Ajmer issued an order reducing the pension by 10% for a period of one year from 1.1.1996 to 31.12.1996 and to recover the amount which had been paid in excess as pension to the respondent @ Rs.446/- per month with effect from 1.4.1989.

The respondent again approached the Tribunal challenging the order dated 8.2.1996 in Original Application no.167/1996. By the order impugned in this writ petition, the Tribunal did not interfere with the first part of the order by which monthly pension was reduced by 10% for one year from 1.1.1996 to 31.12.1996. As regards second part of the order, the Tribunal held that commutation of pension was for ten years and during this period the pensioner receives pension minus the commuted value of monthly pension

and therefore recovery of Rs.446/- per month as excess payment was misconceived and without any basis. The Tribunal observed that recovery could only be effected by giving opportunity of hearing which was not done in the instant case. In these premises, the Tribunal held that the appellants are not entitled to recover any amount from the respondent and to this extent quashed the latter part of the impugned order dated 8.2.1996.

Under rule 316 (1) of the Railway Pension Rules 1950 where any departmental or judicial proceeding is instituted under rule 315 or the departmental proceeding is continued under clause (a) of the proviso thereto against a railway servant who has retired on attaining the age of compulsory retirement or otherwise, he is to be paid a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement – from the date of the retirement to the date of conclusion of the proceeding but no gratuity or death –cum-retirement gratuity can be paid until conclusion of the proceeding and the issue of final orders thereon.

Certain other provisions of the Pension Rules and the Railway Establishment Code, 1973 have also been cited in the writ petition in terms of which, prima facie, the respondent was not entitled to the release of DCRG or facility of commutation of pension until final order was passed on the enquiry report. However, the petitioners did not challenge the direction of the Tribunal, and instead released the amount, albeit under pain of contempt, it is too late to go into that aspect of the case. The only point for consideration is whether the direction for recovery of the excess amount paid as pension suffers from any illegality warranting interference by the Tribunal ?

Facts of the case stated hereinabove are not in dispute. Indisputably, the appellant was sanctioned provisional pension @ Rs.1338/- per month. He continued to receive pension at the same rate even though part of it to the extent of Rs.446/- was commuted and the sum of Rs.55,982/- being the commuted value of pension was paid to him. Having received the commuted value of pension to the extent of Rs.446/-, it is clear that the respondent was not entitled to

receive the whole amount of pension. The direction to recover the excess amount viz Rs.446/- paid as pension from 1.4.1989 clearly therefore did not suffer from any illegality.

The logic applied by the Tribunal that commutation is allowed for a period of ten years during which pensioner receives pension minus commuted value of monthly pension is totally ununderstandable.

It goes without saying that during the relevant period pension is paid minus commuted part of it and on expiry of the stipulated period, the pension gets restored. This is however a totally irrelevant consideration in the facts of the case. The present case is one of excess payment. May be, the respondent did not play any role as argued by Shri R.N. Mathur appearing for him, and the excess payment was on account of the mistake of the office but that would not give sanctity to the payment.

The other ground assigned by the Tribunal regarding violation of the rules of natural justice also in the facts of the case appears to be

misconceived. Undoubtedly, if any order is likely to result in adverse consequences, the person must be given opportunity of hearing; however, the present case is not a case of recovery in the real sense. What is sought to be done is to realise from the respondent the money which never belonged to him. Where the recovery is made as a measure of punishment the position would undoubtedly be different and in that case, the person has to be given opportunity of hearing. But where the recovery is sought to be made of money which has been paid in excess, the person who has received excess payment, beyond his entitlement, cannot make any grievance, and the department would be fully justified to recover the money which always belonged to it.

We thus do not find any substance in the rationale of the Tribunal in upholding the claim of the respondent.

Shri R.N. Mathur made a vain attempt to submit that it would be too harsh to recover the excess amount which comes to Rs.55,982/- after

seventeen years of retirement from pension. He submitted that if the recovery is effected, the respondent would be left with a meagre amount as pension. Alternatively, he submitted that the amount may be recovered in instalments. In support of the submissions, counsel placed reliance on V. Gangaram Vs. The Regional Joint Director & Ors, JT 1997 (5) SC 385 and Kerala State Road Transport Corporation Vs. K.O. Varghese & Ors. JT 2003 (Supp.2) SC 145.

We have already dealt with first part of the submission though in a different context. The money never belonged to the respondent and therefore he cannot make any grudge if the same is sought to be recovered. As regards the possible adversities which may ensue as a result of recovery, it may simply be observed that the respondent himself is to blame for the situation. The impugned order was issued on 8.2.1996 and if the respondent had not challenged the same and allowed the amount to be recovered, the process of recovery would have been over long back. Having stalled the process of recovery for ten years it does not lie in the mouth of the respondent to say

that recovery should not be made after seventeen years of retirement. It is to be kept in mind that the value of money has declined over the years and the amount sought to be recovered does not have the same value as in the year 1996. The respondent having retained the excess amount all these years and benefited therefrom, he cannot make any grievance of the fact that he may have to part with some money at this stage. Rs.1338/- was sanctioned as pension in the year 1989. Though the relevant information is not on record, we can take judicial notice of the fact that pension of Central Government employees was revised in the year 1996 and therefore pension sanctioned to the respondent in 1989 must have undergone revision. That is besides dearness allowance paid on the amount. Therefore the argument that recovery would leave a meagre amount in the hands of the respondent does not cut much ice.

However we find merit in the alternative submission of the counsel for the respondent that recovery should be made in instalments. As a matter of fact, counsel for the petitioners did not take any stand to the contrary. He submitted that if the

respondent had made such a prayer in 1996, the orders would have been passed for recovery in instalments. We in the circumstances called upon counsel for the parties to suggest the number of instalments in which the amount could be recovered. Counsel for the parties sated that Court may fix the instalments in its discretion.

Having given our anxious consideration, we are of the view in the facts and circumstances that recovery of the excess amount may be made in twelve equal monthly instalments commencing from December 2006. We direct accordingly.

In the result, the impugned order of the Tribunal setting aside the part of the order dated 8.2.1996 directing recovery of excess amount paid as pension is set aside; and as a result, the original application of the respondent is dismissed.

The writ petition is allowed in the above terms.

[P.S. ASOPA], J. **[S.N. JHA], CJ.**

Skant/-